KARPAL SINGH RAM SINGH

v.

AHMAD BAHRIN IDRUS SAC II & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL HAMID SAID J
[ORIGINATING SUMMONS NO: S2-21-92-2002]
10 JULY 2002

CIVIL PROCEDURE: *Declaration - Application for - Traffic offence - Notification of traffic offence and offer to compound - Notice served twice for single alleged offence - Whether notices to be rendered null and void - Powers to compound - Road Transport Act 1987, s. 120 - Whether issuance of notices ultra vires powers conferred - Whether tantamount to negligence - Whether application to be granted*

PUBLIC SERVANTS: *Criminal proceedings - Negligence - Traffic offence - Road Transport Act 1987, s. 79(2) - Notification of traffic offence and offer to compound - Notice served twice for single alleged offence - Whether there was negligence in exercise of duties*

The plaintiff was served with two notifications of traffic offence and offer to compound by the defendants when he had allegedly exceeded the speed limit, thereby contravening s. 79(2) of the Road Traffic Act 1987 ('the RTA'). The plaintiff contended that as a single offence was alleged, he should not have been given two notifications. He applied for a declaration to this court that the traffic offence and offer to compound were null and void, and of no consequence or effect, therefore rendering compliance discretionary. Additionally, he submitted that the respondent had exercised the statutory powers conferred negligently.

Held:

[1] On the allegation of negligence, the first defendant had explained their act was a genuine mistake and that the plaintiff would not be put in double jeopardy. Thus, as there was no contradiction to the material assertion that even though two notifications were sent out, the plaintiff would not have to pay twice for the same offence alleged by the first defendant, therefor the plaintiff's present contention should fail. (p 245 e-f & g)

[2] The contents of the notice sent indicated that the plaintiff was not obliged to comply to pay the compound as it was only an offer. Notice 170A has two parts, *ie*, the allegation of offence under the said s. 79(2) and

the offer to compound. When an offence is alleged to have been committed under the said section, a police officer, such as the first defendant in the present case, has the power to compound the offence under s. 120(1)(a) of the RTA. Thus, the first defendant has not acted *ultra vires* to compound the alleged offence. Form 2 was a legal notice and offer to compound. (pp 247 d & 248 b)

[Application dismissed with costs.]

Case(s) referred to:

Datuk Syed Kechik v. Government of Malaysia [1979] 2 MLJ 101 ***(refd)***

Imperal Tobacco Ltd v. Attorney General [1980] 1 All ER 866 ***(foll)***

Karpal Singh v. Attorney General Malaysia [1986] 1 CLJ 332; [1986] CLJ (Rep) 391 ***(dist)***

Lochgelly Iron and Coal Co Ltd v. M'Mullan [1934] AC ***(refd)***

Ng Hee Thoong v. Public Bank Bhd [1995] 1 CLJ 609 ***(refd)***

Legislation referred to:

Road Traffic Act 1987, ss. 79(2), 120(1)(a), (2)

Road Traffic (Compounding of Offences) Rules 1959, r. 3(1)

Rules of the High Court 1980, O. 15 r. 16

Other source(s) referred to:

Dr Wan Mohd Nor Wan Daud, *The Educational Philosophy and Practice of Syed Muhammad Naquib Al-Attas, An Exposition of the Original Concept of Islamisation,* p 88

For the plaintiff - Karpal Singh (Gobind Singh Deo & Ramkarpal Singh); M/s Karpal Singh & Co

For the defendants - Dato' Azahar Mohamad (Azizah Nawawi); AG's Chambers

Reported by M Maheswaran

JUDGMENT

Abdul Hamid Said J:

The plaintiff, Karpal Singh a/l Ram Singh, is a prominent advocate in Malaysia. He is the registered owner of a Mercedez Benz S320 registration No: PAJ 9898. He had received two notifications of traffic offence and offer to compound dated 30 April 2002 under s. 79(2) of the Road Traffic Act 1987 for speeding in excess of the speed limit of 80 km per hour by 22 km per hour at Km 12, Ayer Keroh Melaka. The two notifications of the notice in Form 2 is reproduced below:

BORANG 2

FORM 2

(KAEDAH 2)

(RULES 2)

KERAJAAN MALAYSIA

GOVERNMENT OF MALAYSIA

AKTA PENGANGKUTAN JALAN 1987

ROAD TRANSPORT ACT 1987

NOTIS DAN TAWARAN KOMPAUN KESALAHAN LALULINTAS

NOTIFICATION OF TRAFFIC OFFENCE AND OFFER TO COMPOUND

No. Notis Pol. 170A:
Notice Pol. 170A No: R289957

Tkh/Masa Dikeluarkan:
Date/ Time Issued: 11/01/2002 JAM 1213

Tempat Kesalahan
Place of Offence: KM12 A/Keroh

Tarikh/Masa Kesalahan: 11/01/2002 JAM 1213
Date/Time Of Offence:

Jenis/No. Kenderaan: MOTOKAR
Type/Vehicle Registration

No. Lesen Kenderaan: PAJ 9898
No: Vehicle License No: PAJ 9898

Kadar Kompaun Maksima RM300.00

Tawaran Kompaun dan Jenis Kesalahan
Offer of Compound and Type Of Offence

RM110 S 79(2) APJ 1987 HAD LAJU
(1) LAJU DIKESAN : 102 KM/J
(2) HAD LAJU : 80KM/J
(3) LEBIHAN LAJU : 22KM/J

08100-1-R289957 SD-PAJ 9898 400628075079

KARPAL SINGH A/L RAM SINGH 080100-R289957–JPJ–MKR–Y
144-A JALAN UTAMA
20020111-0000004625
GEORGETOWN 10450

Pengaduan telah dibuat terhadap tuan punya/pemandu Kenderaan Motor Nombor: melalui notis Pol. 170A di atas.

A report has been made against the owner/driver of the Motor Vehicle No: through notice Pol. 170A as above

2. Anda dengan ini ditawarkan untuk menyelesaikan kesalahan di atas dengan kadar kompaun yang dinyatakan. Bayaran secara tunai boleh dibuat di mana-mana Cawangan Trafik berkomputer/Balai Polis atau Wang Pos/Kiriman Wang/Pesanan Juruwang/Pesanan Bank/Draf Bank atas nama Pegawai Polis yang dinyatakan di dalam petak bertanda (*).

You are hereby offered to have the offence(s) compounded according to the sum quoted. Payment in cash may be made at any Traffic Branches/Police Stations or by Postal Order/Money Order/Cashier's Order/Banker's Order/Bank Draft in favour of the Police Officer as stated in the box marked (*).

3. Tawaran ini berkuat kuasa sehingga 30/05/2002. Sekiranya tiada jawapan selepas dari tarikh itu, tindakan saman akan diambil.

This offer to compound the offence(s) remains in force until 30/05/2002. If no reply is received after that date proceedings by summons will be instituted.

Gunakan alamat ini untuk semua surat menyurat
Use this address for all correspondence purpose

(AHMAD BAHRIN BIN IDRUS) SAC II
KETUA TRAFIK PASUKAN
POLIS DIRAJA MALAYSIA.

The same Form was sent twice to the plaintiff. He was not happy to have received the notifications. He therefore came to the civil court of the High Court in Kuala Lumpur seeking:

(i) A declaration the two notifications of traffic offence and offer to compound under the hand of the first defendant dated 30 April 2002 issued to the plaintiff by registered post are null and void and of no consequence or effect and the plaintiff is not obliged to comply with the demand made therein to pay a compound RM110 for an alleged offence of speeding at KM12 Ayer Keroh Melaka on 11 January 2002 at 12.13pm under s. 79(2) of the Road Traffic Act 1987 (Act 333);

(ii) A declaration the first defendant has acted *ultra vires* the power conferred on him to compound a traffic offence pursuant to s. 120 of the Road Transport Act 1987 and r. 3(1) of the Road Traffic (Compounding of Offences) Rules 1959;

(iii) A declaration the first defendant has abused his power and/or acted negligently in issuing the two notifications of traffic offence and offer to compound dated 30 April 2002 for the same alleged offence thereby placing the plaintiff under double jeopardy in the commission of the alleged offence of exceeding the speed limit by 22km/h at KM 12 A/Keroh, Melaka on 11 January 2002 at 12.13pm and consequently being subjected to an offer to compound the said alleged offence for RM110;

(iv) A declaration Form 2 in the two notifications is null and void and not on the authority of a valid or legal power.

At the outset, I would like to settle the preliminary issues raised during the hearing in open court.

The application is in the nature of a civil application. Therefore O. 15 r. 16 of the Rules of the High Court 1980 (PU(A) 50/1980) which reads:

16. Declaratory Judgment (O. 15 r. 16)

No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed, applies.

The power and limit of the court to grant a declaratory order was settled in the case of *Datuk Syed Kechik v. Government of Malaysia* [1979] 2 MLJ 101 ('Datuk Syed Kechik'). At p. 107 Justice Lee Hun Hoe (CJ) Borneo, as he then was, said:

A declaratory order will eliminate anxiety of having to live under a cloud of fear. In granting a declaration the court has to consider the utility of the declaration claimed and the usefulness of the declaration claimed on the one hand as against the inconvenience and embarrassment that may result on the other hand. As to the determination of future right its importance for certain purposes is not in doubt, particularly when a mere declaration is usually the only remedy. Zamiron *"The Declaratory Judgment"* at page 206 states:

> It is not uncommon for persons to confront an allegation that at some future date they will become liable to another, or that they will not have a certain right which they expect to come into existence, or that their existing right will then expire. They may in such circumstances bring a declaratory action to remove the cloud from their future rights.

And at p. 108 of the same judgment, Justice Lee continued on the consideration to be borne in mind by a High Court judge in granting a declaration:

It is right that the court should consider whether the declarations, if granted, will serve any purpose and whether it will cause embarrassment, inconvenience or injustice to other persons. Unless the court is satisfied with the answer to the matters, it should decline to make the declarations. Even though appellant may have established his rights the court may in the exercise of its discretion refuse to make any of the declarations having regard to a variety of considerations.

The plaintiff who acted on his own behalf submitted that his action in filing this case affects about 4.6 million of alleged offenders under the same notification. Some have paid the compound to save the inconvenience of a trial. I agree that if all the alleged offenders were to be issued with summonses the judicial system will break down. The so called "saman ekor" is easy to implement and like the "pukat harimau" (tiger net), the system "catches" the big and small. If the said notification is not acted upon by the alleged offender he may get a knock on the door by the authorities who will serve the summons issued by the courts.

The "saman ekor" has its weakness in enforcement as evident lately of the long queues to pay the compounds at all the Traffic Branches of Police Stations in the country. This is mainly due to the offenders who ignore the notice and offer to compound sent to them *vide* Form 2 under Police Notice 170A ('170A'). There is much to be said of the older system wherein the vehicle is stopped and the summons issued on the spot as the receipt of the summons can have an effect on offender's observation of the traffic rules and regulations for the rest of the journey and the registration number mixed up or who was driving the vehicle.

In the opening remarks the plaintiff urges the court to decide this case without fear or favour. He went on to say "Let the high heavens fall but let justice be done." Analysing what was said, I can assure the plaintiff that my fear is to the Creator and His retributions and my favour is to the truth.

Justice has often been said, but it has not been defined. I would however like to quote a sentence from the book *"The Educational Philosophy and Practice of Syed Muhammad Naquib Al-Attas, An Exposition of the Original Concept of Islamisation"* by Dr. Wan Mohd. Nor Wan Daud who wrote at p. 88:

> Al-Attas has been arguing for the past three decades, based on the Islamic conceptions, that justice is not impartiality or neutrality, but partiality to the truth.

The "truth" in my case takes its ordinary meaning.

Before proceeding to the main issues, the plaintiff referred to the case of *Karpal Singh v. Attorney General Malaysia* [1986] 1 CLJ 332; [1986] CLJ (Rep) 391. The said decision was referred to as authority for the proposition that this High Court has the jurisdiction to hear this application even though the matter is criminal in nature. The High Court in Alor Setar hears both criminal and civil matters. In Kuala Lumpur the High Court are administratively divided. As a judge of the High Court of Malaya, I can hear both civil and criminal jurisdiction but administratively my present assignment is only on civil matters. It is therefore pertinent to note that, with respect that "... and any attempt to block the only avenue open to those who seek justice will be viewed with askance by the court" quoting from the case above may not be fully accurate in the present set up in Kuala Lumpur as there are specially set up criminal courts. This issue was settled in the case *Imperial Tobacco Ltd. & Anor v. Attorney General* [1980] 1 All ER 866 *(Imperial Tobacco).*

I note that the said case of *Karpal Singh v. Attorney-General Malaysia*, is more in the nature of a *mandamus*, the effect of which is to compel the authority to comply with the provisions of the Criminal Procedure Code before recording a statement from the plaintiff.

In this judgment, I would deal with Prayer 3 first as it can quickly be disposed off. The plaintiff in his oral submission has withdrawn the abuse of power in the prayer but retains the allegation that the defendant was negligent in issuing him with two 170A notices.

In the legal term negligence connotes more than its ordinary meaning. *Black's Law Dictionary*, 7th edn defines negligence as "The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation ...". The same dictionary quotes negligence as defined by Patrick Devlin in *The Enforcement of Morals* as "Negligence in law ranges from inadvertence that is hardly more than accidental to sinful disregard of the safety of others."

The defendants in their submission quote *Lochgelly Iron and Coal Co. Ltd. v. M'Mullan* [1934] AC where Lord Wright defined negligence as:

> In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owing, ...

The plaintiff in his affidavit in support of his application contended that the two notices constitute an act of negligence. There is that duty for the first defendant to issue only one notice. But the first defendant in his affidavit in reply has explained that the alleged act of negligence was a genuine mistake and the plaintiff would not be put to double jeorpady. There is no affidavit in reply from the plaintiff. In the case of *Ng Hee Thoong & Public Bank Berhad* [1995] 1 MLJ 281 the Court of Appeal at Held (1) decided:

> (1) In evaluating affidavit evidence, where one party makes a positive assertion upon a material issue, the failure of his opponent to contradict it is usually treated as an admission by him of the fact so asserted.

I dismiss prayer 3 as there is no contradiction to the material affirmative assertion that even though two notifications were sent out, the plaintiff would not have to pay twice for the same offence alleged by the first defendant. It would have been different if the plaintiff had paid twice for the same offence.

By prayer 1 the plaintiff asks for a declaration that the traffic offence and offer to compound are null and void and of no consequence or effect and the plaintiff is not obliged to comply with the demand.

Upon careful reading of the content of 170A, I cannot help but conclude that the plaintiff is not obliged to comply to pay the compound as it is only an offer. (I will deal with the validity of the notice later). The last sentence to the said 170A says, "This offer to compound the offence(s) remains in force

until 30 May 2002. If no reply is received after that date proceeding by summons will be instituted." It is true that traffic offenders need not take up the offer. The long queue therefore is the result of traffic offenders who want to pay the compounded sum after the expiry of the offer to compound instead of a higher sum and the requirement to attend court on the date as stated in the summons that will ensue from the failure to take up the offer. The notification under Pol. 170A is an administrative action by the police as empowered by s. 120 of the Road Traffic Act 1987. The police, in plain language, need not compound the offence as the said section uses the word "may".

I must, however, say that the effect of the declaration sought under prayer 2 and 4 by the plaintiff is different. In this case the plaintiff sought to declare that the first defendant has acted *ultra vires* the power conferred on the first defendant to compound a traffic offence pursuant to s. 120 of the Road Traffic Act 1987 and r. 3(1) of the Road Traffic (Compounding of Offences) Rules 1959 and therefore the notices under 170A is null and void. What as I understand it, the plaintiff seeks then is to declare that the police has no legal authority to compound the offence and hence cannot collect the compound paid by the motorists.

In view of the prayers 2 and 4 are so closely connected I will decide the issues together. In doing this a closer examination of the relevant provisions in the Road Traffic Act 1987 ('RTA 87') is instructive.

The Form 2 in Notice Police 170A states clearly that an offence has been committed under s. 79(2) of the RTA 87. Section 79(2) states:

Penalties for neglect of traffic directions and signs

79. (1) ...

(2) Subject to subsection (1), where any traffic sign has been lawfully placed on or near any road, any pedestrian or any person driving or propelling any vehicle, who fails or neglects to conform to the indication given by the sign, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred ringgit.

(3) ...

The notice to the plaintiff through the 170A is not only to serve on the plaintiff that motor car PAJ 9898 of which the plaintiff in the registered owner has an allegedly committed an offence under the said section but also to offer to the plaintiff to compound the offence. The 170A has two parts ie, the allegation of the offence under s. 79(2) RTA 87 and the offer to compound.

Powers to compound is found under s. 120 of RTA 87. Section 120(1) reads:

Powers to compound

120. (1) Any of the following officers, that is to say:

(a) a Chief Police Officer, a Commissioner of Police or any police officer not below the rank of Inspector specially authorized in writing by name or by office in that behalf by the Minister charged with the responsibility for the police;

(b) ...

(c) ...

(d) ...

(e) ...

may in his discretion compound any such offence against this Act as may be prescribed as an offence which may be compounded by such officer or ...

It is noted therefore that the alleged offence committed falls within s. 79(2) RTA 87. When this happens a police officer as specified under s. 120(1)(a) of the RTA 87 has the power to compound the offence not exceeding three hundred ringgit. The first defendant being such an officer has the power to compound.

The issue of Form No. 2, prescribed under the Road Traffic Ordinance 1958 ('RTO 58') is not relevant. To my mind what is important is the fact that the first defendant is empowered to issue the notice and the discretion to compound the offence under the RTA 87. This is basic. The Form No. 2 is different in content. The Form 2 used in this case has clearly indicated the relevant Act and the offence committed, the date and time and the nature of the offence.

Section 120(2) RTA 87 says that the Minister may make rules to prescribe the offences which may be compounded and the method and procedure therefore. The power given to the Minister is to "make rules to prescribe the offences", not to prescribe the Form to be used. The power to compound is vested in the police by virtue of s. 120(1)(a) of the RTA 87. In this case the Minister has chosen not to prescribe the method to be used in compounding motor offences.

I come to the conclusion that there is no necessity for the offence under s. 79(2) RTA 87 to be *via* a prescribed form. It is unfortunate that the said form is headed by "Form 2". This Form 2 resembles Form No. 2 in the use of figure 2 under the RTO 58 and the rules therein and nothing more.

I heard and read a lot of the submissions on the right way to interpret Form No. 2 in relation to the RTA 87. But what is important to the court is the basic law as to whether the first defendant has the power to compound the offence. Based on s. 120 RTA 87, I say he does.

I therefore find that the first defendant has not acted *ultra vires* to compound the alleged office. I also hold Form 2 is a valid legal notice and offer to compound.

The decision to dismiss the application is therefore on the following grounds:

(i) The application is in the nature of a civil declaration and to quote the Federal Court in *Syed Kechik* "will not serve any purpose and it will cause embarrassment and inconvenience to the defendants."

(ii) The more appropriate forum for this declaration is the criminal courts in Kuala Lumpur as we are administratively divided into civil and criminal courts.

(iii) On the merits I find that the defendants are vested with the power not only to serve the notice but also to compound the offence without demeriting the offender who paid the compound.

Application dismissed with costs to be taxed.